

**Written Testimony of Sharon Buccino,  
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**Before**

**House Committee on Natural Resources:  
Subcommittee on Energy and Mineral Resources**

**Re: Proposed Legislation to Empower States to Manage the Development and  
Production of Oil and Gas on Available Federal Land**

**October 13, 2017**

Good morning Mr. Chairman and members of the subcommittee. Thank you for the opportunity to testify. My name is Sharon Buccino. I am senior attorney and Director of the Land & Wildlife program at the Natural Resources Defense Council (NRDC). NRDC is a nonprofit organization of scientists, lawyers, and environmental specialists dedicated to protecting public health and the environment. Founded in 1970, NRDC has more than 3 million members and online activists nationwide, served from six offices across the country.

**Vision**

I'd like to start where I think we agree: (1) No matter where we live, each one of us has a right to clean water and clean air. (2) Our public lands are part of what makes America great. (3) Choices we make as a nation about energy affect our daily lives today, as well as our children's lives tomorrow.

We all want a secure and prosperous energy future. The question is how to get there. So let me turn to the bill at hand and whether it helps us get to a secure and prosperous energy future or hurts us.

I will focus on three fundamental elements of the law that apply to management of our public lands. The first is minimum protections – the basic protections for the air we breathe, the water we drink and the right to participate in decisions that affect us. The second is multiple use – the principle that our federal lands are managed to protect a variety of uses from hunting and hiking to drilling. And the third is the importance of effective enforcement. I will explain how each is provided now under federal law and compare it to what would happen under the proposed legislation.

**Minimum Protections – Ensuring Clean Air and Clean Water for All**

Our system of environmental law is built on the principle of cooperative federalism. Laws like the Clean Air Act, the Clean Water Act and the Surface Mining Control and

Reclamation Act give states flexibility to determine *how* best to achieve certain goals like the level of healthy air quality. But it is the federal government that sets the standard for what counts as healthy. States are often free to set standards that are more stringent than the minimum federal protections, but cannot use weaker standards. There is good reason behind this approach – every person should have a right to clean air and water no matter where they live.

Another basic protection provided by current federal law is the right to participate in decisions that affect our daily lives. Such right is at the core of our democratic government. It is enshrined in the laws that govern the operation of federal agencies such as the Environmental Protection Agency and the Department of the Interior. The right to participate is particularly relevant when we are talking about the public lands that belong to each and every one of us and to future generations. The lands at issue in the legislation being considered are the millions of acres that are managed by the Bureau of Land Management (BLM) and the Forest Service for the benefit of all Americans. The two statutes that govern these lands – the Federal Land Policy and Management Act (FLPMA) and the National Forest Management Act – provide the public the same basic opportunity to participate in planning, leasing and permitting decisions no matter where these lands are located.

As proposed, the ONSHORE Act would take away these basic rights to participate. A state *might* provide something comparable, but there is no guarantee. The statutory language included in the ONSHORE Act would arguably supersede the protections currently provided under existing law. Without a federal decision, the National Environmental Policy Act would not apply. Neither would the protections provided under the National Historic Preservation Act and the Endangered Species Act. FLPMA and the National Forest Management Act prohibits BLM approval of actions such as drilling permits that are inconsistent with the management plans for the lands at issue. The ONSHORE Act imposes no such explicit requirement on states and thus provides no guarantee of public participation in the decision-making process or protection for vulnerable species or historic artifacts.

## **Multiple Use – Balancing Competing Needs**

In addition to clashing with cooperative federalism, the proposed legislation conflicts with another fundamental element of the legal framework governing our public lands – the multiple use mandate. BLM’s governing statute – the Federal Land Policy and Management Act – requires that our public lands be used in the “combination that will best meet the present and future needs of the American people.” 43 U.S.C. 1702(c). Such mandate requires balance – BLM cannot lock up all land to be preserved untouched; but it also cannot turn all land over to drilling excluding other uses such as hunting, hiking, camping and grazing.

States do not have a similar mandate. This is probably one reason why states at times issue permits faster than BLM. But sacrificing the multiple use mandate for speed in oil and gas permitting is something few Americans want. Poll after poll show that Americans across the country and across party lines value the recreational opportunities our public lands provide. They value the beauty that our public lands hold. And they value the role that our public lands play in our national identity. In fact, sacrificing the multiple use mandate as the proposed

legislation would do for permitting speed is a deal that not even many oil and gas workers would likely take. These workers are the same people who treasure the chance to take their families out into the wide open spaces to hunt, fish and enjoy the outdoors that our public lands currently provide.

## **Effective Enforcement – Holding Companies Accountable**

Finally, what's at stake in delegating permitting on federal land to states is not simply how quickly permits get issued. Issuing permits is the easy part compared to enforcing them. Enforcement requires staff and money. Inspectors are needed to ensure permit conditions protecting health, safety and the environment are met. Money and staff are also needed to ensure that production is accurately accounted for and appropriate royalties are paid.

The proposed legislation fails to address this critical issue. Section 44 specifies what a state must demonstrate in order to receive exclusive authority over the issuance and enforcement of drilling permits and plans. A state's application must address the substance of its regulatory program, but nowhere is there any requirement to address the staff and money available to enforce the program. Many states are already strapped to inspect oil and gas wells for which they are now responsible. Adding thousands of new wells on federal land will only stretch the limited resources of the states further.

BLM's enforcement is far from perfect. Inspection and enforcement research by the Western Organization of Resource Councils shows that both federal and state oil and gas inspection and enforcement programs are consistently understaffed and underfunded.<sup>1</sup> For example, the research found that the number of inspectors continues to decline relative to the number of active wells in most states, although this number increased for the BLM from 2006 until 2011. As a result, all state agencies studied except for the North Dakota Oil and Gas Division have very high ratios of active wells to inspectors, as does the BLM despite the increased inspection resources.<sup>2</sup> More staff and funds through higher permit fees is the answer to these problems, rather than changing who has the authority to permit.

By the Numbers: BLM approved 2,184 Applications for Permits to Drill (APD) in FY16. Of these, 626 were in Wyoming.<sup>3</sup> As of September 30, 2016, BLM managed 12,771,830 acres actively producing oil and gas. Of this total, 4,020,073 acres were in Wyoming.<sup>4</sup> BLM is responsible for inspecting approximately 32,000 wells annually.<sup>5</sup> Inspection activities include compliance with environmental conditions and identifying Drilling Without Approval or trespass wellbores.<sup>6</sup> Inspection responsibilities also include ensuring proper reporting of production.<sup>7</sup> In 2014, BLM spent \$113 million on oil and gas permitting and inspection

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<sup>1</sup> Western Organization of Resource Councils, *Law and Order in the Oil and Gas Fields* (2013 Update) at 1, available at <http://www.worc.org/media/LawOrder2013.pdf> and attached for inclusion in hearing record.

<sup>2</sup> *Id.* at 7-8.

<sup>3</sup> BLM, *Public Land Statistics 2016* (May 2017), at 115, available at [https://www.blm.gov/public\\_land\\_statistics/](https://www.blm.gov/public_land_statistics/).

<sup>4</sup> *Id.* at 118.

<sup>5</sup> U.S. Department of the Interior, *Budget Justifications and Performance Information Fiscal Year 2016*, at VII-100, available at [https://www.doi.gov/sites/doi.opengov.ibmcloud.com/files/uploads/FY2016\\_BLM\\_Greenbook.pdf](https://www.doi.gov/sites/doi.opengov.ibmcloud.com/files/uploads/FY2016_BLM_Greenbook.pdf).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

activities.<sup>8</sup>

BLM also has responsibility for plugging and reclaiming orphan oil and gas wells drilled by previously existing oil and gas companies.<sup>9</sup> While companies are required to post bonds to cover the cost of plugging a well, these bonds rarely are insufficient to cover the actual cost of doing so.<sup>10</sup> As one example, between 1997 and 2014, it cost the State of Wyoming \$11 million in total to plug orphaned wells, and only \$3 million was covered by bonds.<sup>11</sup> Is this a responsibility that states are willing to take on for the thousands of wells on federal land? If not, why should the cost be left to federal taxpayers when states desire the control over and revenue from drilling permit approvals? Wyoming's state bond requirements are better than some, but where exactly does the ONSHORE Act leave the clean up responsibility and where will the funds come to pay for it?

## Conclusion

To end, I'll come back to where I started – our common goal of a secure and prosperous energy future. NRDC's vision of what that looks like is probably different than that of some in this room. NRDC believes that we must invest in efficiency and renewable energy, rather than continuing to rely on dirty fossil fuels. We need to lead into the future, rather than remain stuck in the past. That said – we can't shut down all our oil and gas wells tomorrow. Figuring out the most effective and efficient way to regulate them is important. Federal oversight is far from perfect. Too much, however, is lost in simply turning oversight to the states. Minimum federal standards matter. So does a multiple use mandate. And so does effective enforcement. Americans deserve a secure and prosperous energy future. The proposed legislation takes us in the wrong direction.

Thank you again for the opportunity to participate in this hearing.

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<sup>8</sup> *Id.* at VII-95.

<sup>9</sup> *Id.* at VII-101.

<sup>10</sup> Jeff McMahon, "Another Fracking Time Bomb Lurks Beneath the U.S.," *Forbes* (June 5, 2017), available at <https://www.forbes.com/sites/jeffmcmahon/2017/06/05/another-fracking-time-bomb-lurks-beneath-america/#34d15abe3ee9> .

<sup>11</sup> Wyoming Public Radio, *The Rising Cost of Cleaning Up after Oil and Gas* (Oct. 1, 2015), available at <http://insideenergy.org/2015/10/01/the-rising-cost-of-cleaning-up-after-oil-and-gas/> .